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Supreme Court of the United States

October Term, 1962

Nos. 383 and 538

EDWARD CARMINE COPPOLLA
and ALFRED SANANTONIO,

Petitioners,
[in No. 383]

—v.—

UNITED STATES OF AMERICA,

Respondent.

ANTHONY CAMPISI,

Petitioner,
[in No. 538]

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONERS' JOINT REPLY BRIEF

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This joint reply brief is filed on behalf of all of the petitioners in the two above entitled proceedings (Nos. 383 and 538), the petitions being companion and the petitioners in both causes being represented by the same counsel.

1. Surprisingly, the Government's main thrust in its briefs in opposition in both of these proceedings seems to

be aimed at showing that the evidence as to the alleged guilt of each of the petitioners was sufficient. This is surprising because, although petitioners surely do not concede their guilt, their respective prayers for certiorari herein are not made on the basis of any such issue of sufficiency of the evidence but on issues of fair trial—indeed we are not aware that, except in the so-called "no evidence" type of case, persons seeking certiorari in this Court or the Government in opposing certiorari are properly supposed to argue the sufficiency of the evidence in criminal cases. It is true that the petitioners herein have tendered the issue of whether the Trial Court's dismissal of the conspiracy counts was merely to "simplify" the case for the jury or whether it rather reflected the trial Court's dissatisfaction with the Government's conspiracy proofs. However, in tendering this latter issue as to the conspiracy counts we were explicit, we had thought, that our purpose in doing so was to call attention to the aggrieving incidents of unfair trial which thereby arose, i.e., in that the proofs under the dismissed conspiracy counts were permitted to remain in the case and to be considered by the jury. Typical of the Government's preference to pitch its opposition to both of the instant petitions on the issue of sufficiency of the evidence rather than on the issue of fair trial, are the following two examples in the Government's respective two briefs in opposition herein: (1) In its brief in No. 383 (*re* petitioners Coppolla and Sanantonio), at page 8, the Government says "Levine further testified that he received forged New York driver's licenses used in cashing bonds from 'Blotchie or Eddie' (II R. 115)." In view of the importance of the issue which petitioners have raised in No. 383 as to whether they were fairly convicted of aiding and abetting, such testimony

by the accomplice Levine would be admittedly serious as showing that "Eddie" (Coppolla) had done more than merely supply bonds to the alleged forgers and utterers. However, this supposed testimony of Levine was actually all but worthless, because, as plainly appears in the Government's appendix in the Court below at pp. 113a to 115a, Levine had specifically testified that he had obtained such driver's licenses not from Coppolla but from Donatiello ("Blotchie"), and then later testified (after repetitious further questioning by the prosecutor amounting to importunity) that he did not remember whether he got them from Coppolla or Donatiello. (2) In its brief in No. 538 (*re* petitioner Campisi), at p. 18, fn. 20, the Government's reply to our demonstration that the counts of the indictment involving the "Lacorte" bonds should not have been submitted to the jury against Campisi, is that "there is no occasion for this Court to consider this contention" because Campisi's concurrent sentence "is wholly supportable on any of the substantive Counts which have undisputable support in the evidence". This argument by the Government quite overlooks our basic contention that the trial of this case under the extraordinary 540-Count indictment inevitably generated to confusion and error to the fatal prejudice of the petitioners and that the entire case, not just the proof as to one count or another, was permeated with this vice. Other examples of the Government's efforts to alter the perspective of this case from one of fair trial to one supposedly involving nothing more than issues as to sufficiency of the evidence, are noted in subsequent paragraphs herein.

2. Twice in its brief in No. 538 (*re* petitioner Campisi) (p. 6, fn. 8; p. 13, fn. 14), the Government asserts that the

Trial Court's dismissal of the substantive counts as to Campisi involving the "McKeon" bonds was the result of the Trial Court's erroneous interpretation of the testimony. The testimony at Tr. 799-803, 807, 868, 1003 shows that the Trial Court agreed with Campisi's counsel that Bartkofsky had testified he obtained the bonds involved in these counts from Donatiello, not Campisi, the Trial Court stating that his written notes so indicated, as did also the written notes of Campisi's attorney, Mr. Bozza. We have checked Bartkofsky's testimony on this point, and we must be candid in informing this Court that the stenographer's notes do not unequivocally either support or negate the recollection of the Trial Court and Mr. Bozza. During the direct examination of the accomplice witness Bartkofsky, as likewise during the examination of the other accomplice witnesses, the prosecutor was continually showing various bonds to the witnesses, and from time to time, just as was, inevitably to be expected under this monster indictment, the witnesses' responses stand upon the stenographic record ambiguously as regards any attempt to pin those responses into precise connection with particular bonds. This confusion in the testimony was aggravated by the Government's intermingling of its substantive and conspiracy proofs, with various bonds from among the hundreds in the case being shown to witnesses and offered in evidence. A prime example of this confusing method of "proof" is found in the Bartkofsky testimony at Tr. 624-632. It is impossible to determine from the stenographic transcript just which bonds Bartkofsky was referring to when he said at Tr. 632 that he got certain bonds "from Campisi", although on the preceding page (Tr. 631) the witness was apparently being questioned about the bonds involved in forgery counts 405 to 454 (the "Lacorte" bonds).

3. In its brief in No. 538 (*re* petitioner Campisi), at pp. 6-7, the Government sets forth in detail the trial proofs concerning the alleged New Jersey transactions of Bartkofsky, Donatiello and Campisi. By this extensive treatment the Government is evidently seeking to focus the Court's attention on these alleged New Jersey episodes, which were important to the Government's case at the trial because they supposedly depict Campisi as a prime conspirator at an early stage of the alleged conspiracy. However, the Government's extended treatment of this phase in its brief in No. 538, as cited *supra*, apparently overlooks our demonstration at pp. 11-12 of the Campisi Petition herein that this entire phase of the Government's trial proofs turned out to be abortive and that the prosecutor himself apparently agreed to drop this phase of the case against Campisi. In treating this phase in the Campisi Petition herein our theory had been that it was one of the numerous instances to which we were calling attention for the purpose of showing that the inevitable confusions attending this extraordinary prosecution resulted in the denial of a fair trial. The Government's preoccupation, on the other hand, as we have above suggested, seems to be not with this issue of fair trial, but with the issue of the sufficiency of the evidence—so much so that, in the instance just mentioned, the Government's very presentation before this Court takes on a quality of inaccuracy. We hasten to add that we do not for one moment consider this inaccuracy to be deliberate on the part of the Government in its presentation before this Court, but it does show, we think, how difficult it is even for the able attorneys of the Solicitor General's staff to thread their way through this labyrinthine record. How much more difficult must this task have been for the trial jury in this case.

4. On the other hand, in still another instance in its brief in No. 538 (*re* petitioner Campisi), at p. 8, fn. 11, the Government has apparently traced a more sure-footed pathway through the record than has been done by anyone else who has had contact with the case before. In the footnote just cited the Government assembles record facts which point to the conclusion that, in addition to the counts submitted to the jury against Campisi which we have showed should not have been so submitted, it was likewise error to submit to the jury counts 468-471 and 535-538 (the "Raccuia" bonds).

5. While the Government has especially emphasized (throughout both of its briefs) the alleged numerous linkages in the proofs as between the various defendants, it has also argued in a seemingly opposite vein. We refer to the Government's argument, in both of its briefs in opposition herein, that this was really a very simple case in which the proofs as to the various defendants were effectively segregated by the prosecution and the trial Court for the benefit of the jury. Even without the numerous demonstrations which we believe we have made to the effect that the proofs under this 540-count indictment descended upon the jury's minds with a stupefyingly confusing impact, the Government's own contentions before this Court that the various alleged conspiratorial linkages were developed by the Government's trial proofs tend strongly to negate the Government's other argument that the case was a simple one and easily segregated as to the various defendants. Perhaps the strongest single indication that the Government is (to put it mildly) over-optimistic in its assertions before this Court that the case was thus easy to segregate, is the fact that (quite contrary to the Govern-

ment's repeated assertions in its two briefs herein) the Trial Court's charge to the jury wherein that Court supposedly did an adequate job of "segregating" the proofs as to the several defendants is actually a jury charge of the most perfunctory sort when judged by the tests of what should be contained in such a marshalling of evidence for a jury in a criminal case, particularly in a case so confusing as this one. The Trial Court's entire charge on this phase, which the Government repeatedly praises as some kind of model of segregated marshalling of evidence, appears at pp. 167-177 of the defendants' printed appendix in the Court below.

CONCLUSION

For the reasons presented in this joint reply brief, and in the two respective petitions herein, a writ of certiorari should issue in both Nos. 383 and 538.

Respectfully submitted,

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